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No. 92-1107

IN THE

Supreme Court of the United States

OCTOBER TERM 1992

STEWART ARTHUR HOLMES, FOR AND ON BEHALF OF CERTAIN UNDERWRITERS AT LLOYD'S, LONDON, SUBSCRIBING TO INSURANCE EVIDENCED BY GULF COAST MARINE CERTIFICATE NO. 11877, EACH FOR HIS OWN AND NOT ONE FOR THE OTHER; RONALD MALCOLM PATEMAN, FOR AND ON BEHALF OF CERTAIN UNDERWRITERS AT LLOYD'S, LONDON, SUBSCRIBING TO INSURANCE EVIDENCED BY COVER NOTE NO. DEL:50/85/1, EACH FOR HIS OWN AND NOT ONE FOR THE OTHER; AND SEUMUS IAIN COWLEY, FOR AND ON BEHALF OF CERTAIN UNDERWRITERS AT LLOYD'S LONDON, SUBSCRIBING TO INSURANCE EVIDENCED BY COVER NOTE NO. DEL:M822/85, EACH FOR HIS OWN AND NOT ONE FOR THE OTHER,

Petitioners,

—v.—

MR. AND MRS. ALBERT TAYLOR, JR.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MOTION BY THE MARITIME LAW ASSOCIATION OF THE UNITED STATES TO FILE *AMICUS CURIAE* BRIEF AND BRIEF IN SUPPORT OF A PETITION FOR A WRIT OF CERTIORARI

LIZABETH L. BURRELL
Counsel of Record
GEORGE W. HEALY, III
One Battery Park Plaza
New York, New York 10004
(212) 422-7585
Attorneys for the Maritime Law Association of the United States, Applicant for Leave to File Brief as Amicus Curiae

TABLE OF CONTENTS

PAGE

Table of Authorities ii

Motion to File *Amicus Curiae* Brief 1

Nature of Applicant's Interest 2

MLA Can Make a Unique Contribution on Relevant Issues 6

Brief in Support of the Petition for a Writ of Certiorari . 7

Questions of Law Presented 8

Interest of *Amicus Curiae* 8

Summary of Reasons for Granting the Writ 8

Reasons for Granting the Writ 9

I. *WILBURN* SHOULD BE OVERRULED BECAUSE UNIFORMITY IN MARINE INSURANCE LAW IS ESSENTIAL TO MARITIME COMMERCE 9

II. AT MINIMUM, THE CONFLICT IN *WILBURN'S* INTERPRETATION SHOULD BE RESOLVED IN FAVOR OF THE RULE REQUIRING CONSIDERATION OF UNIFORMITY ISSUES, PARTICULARLY AS TO PUNITIVE DAMAGES 14

Conclusion 17

Proof of Service by Mail 18

TABLE OF AUTHORITIES

Cases: PAGE

A/S Ivarans Rederei v. Puerto Rico Ports Authority, 617 F.2d 903 (1st Cir. 1980) 14

Albany Insurance Company v. Anh Thi Kieu, 927 F.2d 882, *rehearing en banc denied*, 934 F.2d 1263 (5th Cir.), *cert. denied*, 60 U.S.L.W. 3266 (1991) 11, 12, 14

Askew v. American Waterways Operators, Inc., 411 U.S. 325 (1973) 5

Bohemia, Inc. v. Home Ins. Co., 725 F.2d 506 (9th Cir. 1984) 16

Chick Kam Choo v. Exxon Corp. 486 U.S. 140 (1988) 5

Illinois Constructors Corp. v. Morency & Associates, Inc., 802 F. Supp. 185 (N.D. Ill. 1992) 11

Knickerbocker Ice Co. v. Stewart, 253 U.S. 149 (1920) 13

Knight v. U.S. Fire Ins. Co., 804 F.2d 9 (2d Cir. 1986), *cert. denied*, 480 U.S. 932 (1987) 14

Kossick v. United Fruit Company, 365 U.S. 731 (1961) 14

Lexington Ins. Co. v. Cooke's Seafood, 686 F. Supp. 323 (S.D. Ga. 1987), *aff'd*, 835 F.2d 1364 (11th Cir. 1988) 11, 12

Magnolia Marine Transport Co. v. LaPlace Towing Corp., 964 F.2d 1571 (5th Cir. 1992) 15

PAGE

Miller v. American Steamship Owners Mutual Protection and Indemnity Co., 509 F. Supp. 1047 (S.D.N.Y. 1981) 12

Offshore Logistics, Inc. v. Tallentire, 477 U.S. 207 (1986)..... 5

Port Lynch, Inc. v. New England International Assurety of America, Inc., 754 F. Supp. 816 (W.D. Wash. 1991) 11

Ray v. Atlantic Richfield Co., 435 U.S. 151 (1978) 5

Sisson v. Ruby, 497 U.S. 358 (1990) 13

Southern Pacific Co. v. Jensen, 244 U.S. 205 (1917)..... 15

Steelmet, Inc. v. Caribe Towing Corp., 747 F.2d 689 (11th Cir. 1984), *vacated in part, adhered to in relevant part*, 779 F.2d 1485 (11th Cir. 1986) 14

Taylor v. Lloyd's Underwriters of London, 972 F.2d 666 (5th Cir. 1992) 11, 12, 15

The LOTTAWANNA, 88 U.S. (21 Wall.) 558 (1875)..... 10

Wilburn Boat Co. v. Fireman's Fund Insurance Co., 348 U.S. 310 (1955).....*passim*

Constitution:

United States Constitution, Art. III, § 2, cl. 3 9

Statutes:

Federal Arbitration Act, 9 U.S.C. §§ 1-15..... 3

PAGE

Water Pollution Control Act Amendments of 1972, 33 U.S.C. §§ 1251-1376 3

United States Inland Navigation Rules, 33 U.S.C. §§ 2001-2073 3

Carriage of Goods by Sea Act, 46 U.S.C. §§ 1300-1315 3

Conventions and Treaties:

Assistance and Salvage Convention (1910), 37 Stat. 1658 (1913), *reprinted in* 6 M. M. COHEN, BENEDICT ON ADMIRALTY, Doc. No. 4-1 (7th rev'd ed. 1990) ("BENEDICT") 4

Civil Liability for Oil Pollution Damages Convention (1969), U.N.T.S. 1409, *reprinted in* 6 BENEDICT, Doc. No. 6-3 4

Collision Convention (1910), *reprinted in* 6 BENEDICT, Doc. No. 3-2 4

Limitation of Liability for Maritime Claims (1976), *reprinted in* 6 BENEDICT, Doc. No. 5-4 4

Limitation of Liability of Owners of Sea-Going Ships (1957), *reprinted in* 6 BENEDICT, Doc. No. 5-2 4

Maritime Liens and Mortgages Convention (1967), *reprinted in* 6A BENEDICT, Doc. No. 8-3 4

1972 Convention for Preventing Collisions at Sea, 28 U.S.T. 3459, T.I.A.S. 8587, U.N.T.S. 15824, as amended, T.I.A.S. 10672, *reprinted in* 6 BENEDICT, Doc. No. 3-4 4

PAGE

Ocean Bills of Lading Convention (The Hague Rules) (1924), 120 L.N.T.S. 155, *reprinted in* 6 BENEDICT, Doc. No. 1-1 4

Regulations:

33 C.F.R. ch. 1, subch. D, Special Note (1987) 3

Treatises:

6B, 7A APPLEMAN INSURANCE LAW AND PRACTICE (1979 & Supps.) 16

Other:

Maritime Law Association of the United States ("MLA") Articles of Association 2-3

MLA Resolutions:

MLA Minutes, MLA Doc. No. 688 (1991) 6

MLA Minutes, MLA Doc. No. 669 (1986) 4

MLA Minutes, MLA Doc. No. 588 (1975) 4

MLA Report, MLA Doc. No. 671 (1987) 5

Hon. John R. Brown, U.S.C.J., Admiralty Judges: Flotsam on the Sea of Maritime Law? (Inaugural Nicholas J. Healy Lecture on Admiralty Law, delivered November 5, 1992 at N.Y.U. School of Law) 13

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MOTION BY THE MARITIME LAW ASSOCIATION OF THE UNITED STATES TO FILE *AMICUS CURIAE* BRIEF AND BRIEF IN SUPPORT OF A PETITION FOR A WRIT OF CERTIORARI

Applicant, The Maritime Law Association of the United States ("MLA"), moves the Court for permission to file an *amicus curiae* brief in support of the Petition for a Writ of Certiorari filed by Stewart Arthur Holmes, for and on Behalf of Certain Underwriters at Lloyd's, London, Subscribing to Insurance Evidenced by Gulf Coast Marine Certificate No. 11877; Ronald Malcolm Pateman, for and on Behalf of Certain Underwriters at Lloyd's, London, Subscribing to Insurance Evidenced by Cover Note No. DEL:50/85/1; and Seumus Iain Cowley, for and on Behalf of Certain Underwriters at Lloyd's, London, Subscribing to Insurance Evidenced by Cover Note No. DEL:M822/85 ("Petitioners"). Petitioners have given consent to the MLA to file an *amicus* brief, but Respondents have refused to consent. Accordingly, leave to file must be sought pursuant to Rule 37.2.

NATURE OF APPLICANT'S INTEREST

MLA has a very strong interest in the disposition of this case. MLA is a nationwide bar association founded in 1899. It has a membership of about [illegible] attorneys, federal judges, law professors and others interested in maritime law. It is affiliated with the American Bar Association and is represented in that Association's House of Delegates.

MLA's attorney members, most of whom are specialists in admiralty law, represent all maritime interests—shipowners, charterers, cargo owners, shippers, forwarders, port authorities, seamen, longshoremen, passengers, marine insurance underwriters and other maritime claimants and defendants.

MLA's purposes are stated in its Articles of Association:

> The objectives of the Association shall be to advance reforms in the Maritime Law of the United States, to facilitate justice in its administration, *to promote uniformity in its enactment and interpretation*, to furnish a forum for the discussion and consideration of problems affecting the

> Maritime Law and its administration, to participate as a constituent member of the Comité Maritime International and as an affiliated organization of the American Bar Association, and to act with other associations in efforts to bring about a greater harmony in the shipping laws, regulations and practices in different nations.

(Emphasis added.)

In furtherance of these objectives MLA, during the ninety-three years of its existence, has sponsored a wide range of legislation dealing with maritime matters, including the Carriage of Goods by Sea Act[1] and the Federal Arbitration Act.[2] The MLA has also cooperated with congressional committees in the formulation of other maritime legislation.[3]

MLA is also participating in several projects of a maritime legal nature undertaken by agencies of the United Nations, including its Commissions on Trade Law ("UNCITRAL") and Trade and Development ("UNCTAD"). It works closely with the International Maritime Organization ("IMO").

MLA has actively participated, as one of some fifty national maritime law associations constituting the Comité Maritime International,[4] in the movement to achieve maximum interna-

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[1] 46 U.S.C. §§ 1300-1315.

[2] 9 U.S.C. §§ 1-15.

[3] *E.g.*, 1972 Water Pollution Control Act Amendments, 33 U.S.C. §§ 1251-1376; implementation of the 1972 Convention for Preventing Collisions at Sea, 28 U.S.T. 3459, T.I.A.S. 8587, U.N.T.S. 15824, as amended, T.I.A.S. 10672, *reprinted in* 6 M. M. COHEN, BENEDICT ON ADMIRALTY, Doc. No. 3-4 at 3.35 to 3-78.2 (7th rev'd ed. 1990) (hereinafter "BENEDICT"), *see* 33 C.F.R. ch. 1, subch. D, Special Note, at 160 (1987); United States Inland Navigation Rules, 33 U.S.C. §§ 2001-2073.

[4] These now include the national associations of Argentina, Australia and New Zealand, Belgium, Brazil, Bulgaria, Canada, Chile, China, Colombia, Costa Rica, Croatia, Czechoslovakia, Denmark, Egypt, Finland, France, Germany, Greece, Hong Kong, Ice-

tional uniformity in maritime law through the medium of international conventions.[5]

MLA believes uniformity in maritime law, both national and international, is of great importance. This concern has been repeatedly expressed by our membership and standing committees. For example, in 1975 the MLA Standing Committee on Uniformity of U.S. Maritime Law recommended that steps be taken to persuade congressional committees "that nationwide and, in fact, world-wide uniformity in the Maritime Law is highly desirable, not only from the standpoint of those involved with maritime commerce but from that of the public as well." A resolution to that effect was unanimously adopted at the MLA Annual Spring Meeting on April 25, 1975.[6] A substantially identical resolution was adopted by the American Bar Association in 1976. This policy has been reaffirmed by the MLA on several occasions, most recently in a 1986 resolution.[7]

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land, India, Indonesia, Ireland, Israel, Italy, Japan, Korea, D.P.R. Korea, Marocco, Mexico, The Netherlands, Nigeria, Norway, Panama, Peru, Philippines, Poland, Portugal, Russian Federation, Senegal, Singapore, Spain, Sri Lanka, Sweden, Switzerland, Turkey, United Kingdom, United States, Uruguay and Venezuela.

[5] *E.g.*, Assistance and Salvage (1910), 37 Stat. 1658 (1913), *reprinted in* 6 BENEDICT, Doc. No. 4-1 at 4-2 to 4-10; Ocean Bills of Lading (The Hague Rules) (1924), 120 L.N.T.S. 155, *reprinted in* 6 BENEDICT, Doc. No. 1-1 at 1-2 to 1-19; Collision (1910), *reprinted in* 6 BENEDICT, Doc. No. 3-2 at 3-11 to 3-19; Limitation of Liability of Owners of Sea-Going Ships (1957), *reprinted in* 6 BENEDICT, Doc. No. 5-2 at 5-11 to 5-29; Maritime Liens and Mortgages (1967), *reprinted in* 6A BENEDICT, Doc. No. 8-3 at 8-25 to 8-32; Civil Liability for Oil Pollution Damages (1969), U.N.T.S. 1409, *reprinted in* 6 BENEDICT, Doc. No. 6-3 at 6-62.103 to 6-76.3; and Limitation of Liability for Maritime Claims (1976), *reprinted in* 6 BENEDICT, Doc. No. 5-4 at 5-32.1 to 5-44.3.

[6] MLA Minutes, MLA Doc. No. 588 at 6397-98 (1975).

[7] MLA Minutes, MLA Doc. No. 669 at 8769 (1986).

MLA has, in furtherance of the uniformity policy and resolutions, filed *amicus* briefs in a number of cases, including a number of briefs accepted by this Court.[8]

It is also the policy of MLA to file briefs as *amicus curiae* only when important issues of maritime law are involved and the Court's decision may substantially affect the uniformity of maritime law.

Such a situation exists in this case. The Court's opinion in *Wilburn Boat Co. v. Fireman's Fund Insurance Co.*, 348 U.S. 310 (1955), has inflicted two injuries on the uniformity doctrine since the case was decided. One of these injuries—the inherent impairment to uniformity created by the Court's endorsement of the application of state law to marine insurance issues—was predicted by two of the Justices who participated in that decision. The second injury was the creation of differing standards for application of state law by district and circuit courts in interpreting *Wilburn*, some of which forego any consideration of the need for uniformity and ignore the role of judicial precedent as a source of maritime law.

Both of *Wilburn's* injuries to uniformity have produced difficulties for all maritime interests because the result in otherwise identical cases can turn solely on geographical differences. Such a result is unfair and is precisely what the framers of the Constitution sought to avoid by placing maritime law under national control.

Moreover, maritime commerce and the courts themselves are burdened when uniformity is breached, for both the likelihood and length of litigation are increased when the governing law is unpredictable and parties are therefore encouraged to gamble on the possibility of a favorable result.

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[8] *E.g.*, *Chick Kam Choo v. Exxon Corp.*, 486 U.S. 140 (1988); *Offshore Logistics, Inc. v. Tallentire*, 477 U.S. 207 (1986); *Ray v. Atlantic Richfield Co.*, 435 U.S. 151 (1978); *Askew v. American Waterways Operators, Inc.*, 411 U.S. 325 (1973). For a more comprehensive listing, see MLA Report, MLA Doc. No. 671 at 8862-63 (1987).

Because of these considerations, MLA in 1991 passed a resolution supporting efforts to overrule *Wilburn* legislatively by inserting in an appropriate federal statute a provision that "[t]he interpretation and effect of policies of marine insurance and other insurances of marine risks shall be governed by the general maritime law and statutes of the United States . . . ."[9]

MLA CAN MAKE A UNIQUE CONTRIBUTION ON RELEVANT ISSUES

MLA's interest in the uniformity and predictability of U.S. maritime law and the collective experience of its members in dealing with the effects of this Court's decision in *Wilburn* gives MLA a broader perspective than the parties to this particular suit. MLA can comment objectively about the need for review by this Court in order to promote national uniformity on the issues presented.

Dated: January 22, 1993

Respectfully submitted,

/s/ LIZABETH L. BURRELL
LIZABETH L. BURRELL
Counsel of Record

GEORGE W. HEALY, III
One Battery Park Plaza
New York, New York 10004
(212) 422-7585
Attorneys for the Maritime Law Association of the United States, Applicant for Leave to File Brief as Amicus Curiae

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[9] MLA Minutes, MLA Doc. No. 688 at 9851-53 (1991).

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BRIEF OF THE MARITIME LAW ASSOCIATION OF THE UNITED STATES, AS *AMICUS CURIAE*, IN SUPPORT OF THE PETITION FOR A WRIT OF CERTIORARI

The Maritime Law Association of the United States ("MLA") respectfully submits this brief as *amicus curiae* in support of the Petition for Certiorari by Stewart Arthur Holmes, for and on Behalf of Certain Underwriters at Lloyd's, London, Subscribing to Insurance Evidenced by Gulf Coast Marine Certificate No. 11877; Ronald Malcolm Pateman, for and on Behalf of Certain Underwriters at Lloyd's, London, Subscribing to Insurance Evidenced by Cover Note No. DEL:50/85/1; and Seumus Iain Cowley, for and on Behalf of Certain Underwriters at Lloyd's, London, Subscribing to Insurance Evidenced by Cover Note No. DEL:M822/85 ("Petitioners").

QUESTIONS OF LAW PRESENTED

Whether *Wilburn Boat Co. v. Fireman's Fund Insurance Co.*, 348 U.S. 310 (1955), should be overruled as disruptive of the uniformity required for treatment of maritime claims?

Whether the Fifth Circuit, in conflict with the Ninth Circuit, erred in failing to consider the need for uniformity before applying state law to a marine insurance contract?

INTEREST OF *AMICUS CURIAE*

This is stated in the motion which precedes this brief.

SUMMARY OF REASONS FOR GRANTING THE WRIT

The Court's majority opinion in *Wilburn* has indeed generated the troublesome host of problems predicted by the concurring and dissenting Justices. The decision has not only ordained fragmentation in lieu of development of marine insurance law on all questions not specifically governed by an existing federal maritime rule, but also encouraged courts to spurn even established marine insurance doctrines in favor of a

hodgepodge of state rules, without regard to the need for uniformity. *Wilburn* should therefore be overruled.

The Fifth Circuit, in contrast to the Ninth Circuit, has lost sight of the fact that a preemption analysis, standing alone, is not adequate to determine whether state law can be applied, even according to *Wilburn*. Thus, in addition to the exaltation of discordant state laws, *Wilburn* has produced conflicting interpretations, some of which, including the decision below, discard the constitutionally-mandated uniformity requirement as a separate element of the inquiry. If *Wilburn* is not overruled, the Court should correct the Fifth's Circuit's failure to consider independently the need for uniformity before applying state law to a marine insurance issue.

REASONS FOR GRANTING THE WRIT

I

WILBURN SHOULD BE OVERRULED BECAUSE UNIFORMITY IN MARINE INSURANCE LAW IS ESSENTIAL TO MARITIME COMMERCE.

Because of the special need for predictability and reliability of rights and obligations in maritime commerce, the Constitution places maritime law and jurisdiction in the hands of the national government, the Admiralty Clause mandating that "all Cases of admiralty and maritime Jurisdiction" fall to the "judicial Power of the United States . . . ." U.S. CONST., art. III, § 2, cl. 3. The principle mandating uniform treatment of maritime cases is not a vacant theoretical requirement, but rather was designed to afford fairness to all maritime litigants by having their conduct and rights governed by the same rules:

> [T]he convenience of the commercial world, bound together, as it is, by mutual relations of trade and intercourse, demands that, in all essential things wherein those

> relations bring them in contact, there should be a uniform law founded on natural reason and justice. . . .
>
> One thing, however is unquestionable: The Constitution must have referred to a system of law co-extensive with, and operating uniformly in, the whole country. It certainly could not have been the intent to place the rules and limits of maritime law under the disposal and regulation of the several States, as that would have defeated the uniformity and consistency at which the Constitution aimed on all subjects of a commercial character affecting the intercourse of the States with each other or with foreign states.

The LOTTAWANNA, 88 U.S. (21 Wall.) 558, 575 (1875).

As Justice Frankfurter observed in his concurring opinion in *Wilburn*, nowhere is the need for uniformity greater than in the area of marine insurance:

> The business of marine insurance often may be so related to the success of many manifestations of commercial maritime endeavor as to demand application of a uniform rule of law designed to eliminate the vagaries of state law and to keep harmony with the marine insurance laws of other great maritime powers.

348 U.S. at 323 (citations omitted). Justice Reed, in dissent, accurately perceived the pernicious effect which the majority opinion has since exercised, stating:

> the Court's decision strikes deep into the principle of a uniform admiralty law and will have the result of unduly burdening maritime commerce. . . .
>
> It is one thing to allow the States to add a remedy or create a new cause of action for certain incidents arising out of maritime activity. It is quite another thing to relinquish an entire body of substantive law making for a whole phase of maritime activity to the States. Such action does

> violence to the premise upon which the admiralty jurisdiction was constructed.

Id. at 327, 333. *See id.* at 327-29, 330, 333-34. Because of the need for predictable and uniform rules in marine insurance, the decision has been severely criticized. *See, e.g., Lexington Ins. Co. v. Cooke's Seafood*, 686 F. Supp. 323, 328 & n.6 (S.D. Ga. 1987), *aff'd*, 835 F.2d 1364 (11th Cir. 1988).

The magnitude of unpredictability created by *Wilburn* is enormous, for the making of a marine insurance agreement commonly involves international as well as interstate activities, and the ship's sphere of operations and the origins and ties of an injured person add further geographical contacts.[1] Parties to maritime endeavors not only cannot predict whether federal maritime law or state law will apply to their insurance rights and obligations, but also are confronted with the additional uncertainty of which state may be deemed to have the "greatest interest in the resolution of the issues." *Taylor v. Lloyd's Underwriters of London*, 972 F.2d 666, 669 (5th Cir. 1992); Petitioners' Brief at 8a. *Accord, Illinois Constructors Corp. v. Morency & Associates, Inc.*, 802 F. Supp. 185, 188 (N.D. Ill. 1992) (citing cases). *See, e.g., Albany Insurance Company v. Anh Thi Kieu*, 927 F.2d 882, 890-91, *rehearing en banc denied*, 934 F.2d 1263 (5th Cir.), *cert. denied*, 60 U.S.L.W. 3266 (1991). In view of the global nature of maritime commerce and the variety of parties in insurance cases, it is difficult to determine which state or even which nation may ultimately be found to have the greatest interest. Moreover, the state with the great-

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[1] As observed by a district court: "Bearing in mind that ships, fishing vessels in particular, often operate in the waters of several or many states, to allow for different standards of coverage where trading limits have been breached according to where a vessel sank, or where the insurance policy providing coverage was issued, etc., would have a severely deleterious effect on uniformity in maritime law." *Lexington* , 686 F. Supp. at 328 & n.7, *quoted with approval in Port Lynch, Inc. v. New England International Assurety of America, Inc.*, 754 F. Supp. 816 (W.D. Wash. 1991).

est interest may decline to intrude its domestic regulations into the field of marine insurance by specifically excluding marine insurance from its insurance regulations and providing that general maritime law is to govern such issues. *See, e.g., Lexington*, 686 F. Supp. at 328; *Miller v. American Steamship Owners Mutual Protection and Indemnity Co.*, 509 F. Supp. 1047, 1049-52 (S.D.N.Y. 1981).

But *Wilburn's* noxious influence is much wider than its holding, for the decision's praise of state involvement in marine insurance and the Court's pronouncement that it would surrender "the regulation of marine insurance . . . [to] the States"[2] has encouraged courts to reject judicially-created marine insurance rules in favor of state law as the Fifth Circuit did below, selecting state law over earlier federal precedent. 972 F.2d at 668-69. And in *Albany*, the Fifth Circuit identified *uberrimae fidei* as an established federal judge-made rule of maritime insurance law applicable to the case before it, but rejected the doctrine in favor of a Texas law which allowed a recovery prohibited by the maritime rule. 927 F.2d at 888-90.[3] A disregard for judge-made law and the consequent decay of federal marine insurance law were among the consequences Judge Frankfurter feared *Wilburn* would engender:

> It cannot be that by this decision the Court means suddenly to jettison the whole past of the admiralty provision of Article III and to renounce requirements for nationwide

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[2] The repeated references to "regulation" and "regulatory power" in *Wilburn* suggest that the Court confused regulation of insurance companies with interpretation of insurance policies. *See* 348 U.S. at 314, 316 (four references), 317, 318 (four references), 318-19, 319 (two times), 320 (two times), 321. The power of states to impose conditions on entities doing business within their jurisdictions is of course entirely distinct from the power of state law to control interpretation of maritime contracts within the admiralty jurisdiction.

[3] Courts in other jurisdictions continue to apply the doctrine. *See* discussion *infra* at __.

> maritime uniformity, except insofar as Congress has specifically enacted them, in the field of marine insurance.
>
> It is appropriate to recall that the preponderant body of maritime law comes from this Court and not from Congress. Judicial enforcement of nationwide rules regarding marine insurance is, as my brother REED cogently shows, deeply rooted in history. What reason is there for abruptly turning over, pending action by Congress, to the crazy-quilt regulation of the different States what so long has been the business of the courts?

348 U.S. at 323 (citations omitted).

Without a course correction by this Court, marine insurance law will cease to exist, except as a contradictory melange of state rules. Particularly in view of its constitutional responsibilities as steward of the principle of uniformity, *e.g.*, *Knickerbocker Ice Co. v. Stewart*, 253 U.S. 149, 160 (1920), the Court should guard the role of the judiciary as a source of maritime law as authoritative as any congressional enactment. *See generally* Hon. John R. Brown, U.S.C.J., Admiralty Judges: Flotsam on the Sea of Maritime Law? (Inaugural Nicholas J. Healy Lecture on Admiralty Law, delivered November 5, 1992 at N.Y.U. School of Law).

Finally, the underpinning for *Wilburn*—that issues arising from a fire on a houseboat used exclusively on an inland lake were so local as not to require the creation of a uniform maritime rule on breach of warranties—has been dislodged by *Sisson v. Ruby*, 497 U.S. 358 (1990), which teaches that the local flavor of the facts of a case does not override the national character of the jurisdiction, issues, interests and governing law. *Sisson's* holding requires at minimum a reconsideration of *Wilburn's* vitality.

Because *Wilburn* endorsed the application of state law to marine insurance, the rights of all parties interested in an insurance policy—the insurers, the insured, and anyone to whom the insured may have some liability—can and now does depend on

geographical happenstance. Since this result, typified by the instant case, contradicts the constitutional mandate requiring national uniformity in cases within the maritime jurisdiction and *Kossick v. United Fruit Company*, 365 U.S. 731 (1961), was not sufficient to correct the damage, *Wilburn* should be overruled.

II

AT MINIMUM, THE CONFLICT IN *WILBURN'S* INTERPRETATION SHOULD BE RESOLVED IN FAVOR OF THE RULE REQUIRING CONSIDERATION OF UNIFORMITY ISSUES, PARTICULARLY AS TO PUNITIVE DAMAGES.

When restricted to its exact holding, *Wilburn* held no more than that where there is no maritime rule governing the question and where the circumstances are such that the constitutional uniformity edict does not require the courts to fashion a rule, courts may apply state insurance law to fill the gap. 348 U.S. at 316. Nonetheless, the disparity between the Court's holding and its tribute to state law has led the circuit courts to reach differing interpretations of *Wilburn* which in turn have lead to further uncertainty and unpredictability in insurance cases.

Some of these conflicts center on a particular issue, such as whether the doctrine of *uberrimae fidei* is of mandatory application to marine insurance policies. *Compare Albany*, 927 F.2d at 889-90 *with, e.g., Steelmet, Inc. v. Caribe Towing Corp.*, 747 F.2d 689, 695 (11th Cir. 1984), *vacated in part, adhered to in relevant part*, 779 F.2d 1485 (11th Cir. 1986), *Knight v. U.S. Fire Ins. Co.*, 804 F.2d 9 (2d Cir. 1986), *cert. denied*, 480 U.S. 932 (1987), *and A/S Ivarans Rederei v. Puerto Rico Ports Authority*, 617 F.2d 903 (1st Cir. 1980). But these conflicts are just corollaries of the central conflict on whether, in the absence of a federal marine insurance rule, a court must also examine the need for uniformity and go on, if that need is great, to formulate a rule.

This uniformity requirement was by no means ignored by the *Wilburn* Court, which emphasized the two part nature of the inquiry by specifically enumerating the "crucial questions" as: "(1) Is there a judicially established federal admiralty rule governing these warranties? (2) If not, should we fashion one?" 348 U.S. at 314.

The second part of the inquiry prescribed by *Wilburn* was necessary to comply with the constitutionally-required uniformity considerations controlling the relationship between state and federal law articulated by the Court in *Southern Pacific Co. v. Jensen*, 244 U.S. 205, 216 (1917):

> it would be difficult, if not impossible, to define with exactness just how far the general maritime law may be changed, modified, or affected by state legislation. . . . [N]o such legislation is valid if it . . . works material prejudice to the characteristic features of maritime law or interferes with the proper harmony and uniformity of that law in its international and interstate relations. This limitation, at the least, is essential to the effective operation of the fundamental purposes for which such law was incorporated into our national laws by the Constitution itself.

Nonetheless, the Fifth Circuit, no doubt influenced by the *Wilburn* opinion's lavish praise of state regulation, now has dispensed altogether with the uniformity prong of the *Wilburn* inquiry, holding that "this court, in addressing maritime cases, has interpreted *Wilburn Boat* to require 'the application of state insurance law principles if there is no specific and controlling federal rule.' " *Taylor*, 972 F.2d at 668 (citations omitted); Petitioners' Brief at 5a. *Accord*, *Magnolia Marine Transport Co. v. LaPlace Towing Corp.*, 964 F.2d 1571, 1577 (5th Cir. 1992) ("state law governs construction of marine insurance contracts except where it is displaced by admiralty law"). Other circuits, most pointedly the Ninth, hold that "state law will control the interpretation of a marine insurance policy only in the absence

of a federal statute, a judicially fashioned admiralty rule, or a need for uniformity in admiralty practice." *Bohemia, Inc. v. Home Ins. Co.*, 725 F.2d 506, 510 (9th Cir. 1984).

The need for uniformity is especially great in the fields of marine insurance and punitive damages, for without the ability to estimate the scope of the risk, even so basic a task as the setting of premiums is reduced to a guessing game. Because of the marked differences among the laws of the states on whether punitive damages may be recovered against an insurer, *see, e.g.*, cases cited in 7A APPLEMAN INSURANCE LAW AND PRACTICE § 4492.05 (1979 & Supps.), 6B *id.* § 4252 nn. 8, 10 & accompanying text, *id.* § 4312 nn. 18-18-26 & accompanying text, a failure to correct the Fifth Circuit's disregard of the uniformity requirement ensures that chance alone will govern cases involving insurers' liability for punitive damages. Such a prospect is particularly appalling in view of the care to which the courts have gone to fashion a uniform standard governing availability of punitive damages in maritime cases.

A strong statement by this Court that in the absence of a federal rule, a court must consider independently the need for uniformity before it can apply state law would not only resolve the general conflict between the Fifth Circuit view and the Ninth Circuit view, but might also curtail or even cure conflicts on the more narrow issues, such as *uberrimae fidei*. Conversely, a failure to correct the Fifth Circuit's analysis of *Wilburn* and its ensuing error in its choice of governing law will guarantee a proliferation of clashing rules and results affecting so significant an issue as punitive damages.

CONCLUSION

We most respectfully urge this Honorable Court to grant the Petition for Certiorari.

Dated: January 22, 1993

Respectfully submitted,

/s/ LIZABETH L. BURRELL
LIZABETH L. BURRELL
Counsel of Record

GEORGE W. HEALY, III
One Battery Park Plaza
New York, New York 10004
(212) 422-7585
Attorneys for the Maritime Law Association of the United States, Applicant for Leave to File Brief as Amicus Curiae

PROOF OF SERVICE BY MAIL

I am a citizen of the United States and a resident of the City of Brooklyn and the County of Kings; I am over the age of eighteen years and not a party to the within action; my business address is: One Battery Park Plaza, New York, New York 10004.

On January 22, 1993, I served the within Motion to File *Amicus Curiae* Brief and Brief in Support of the Petition for a Writ of Certiorari in re: "Stewart Arthur Holmes, for and on Behalf of Certain Underwriters at Lloyd's, London, Subscribing to Insurance Evidenced by Gulf Coast Marine Certificate No. 11877, Each for His Own and Not One for the Other; Ronald Malcolm Pateman, for and on Behalf of Certain Underwriters at Lloyd's, London, Subscribing to Insurance Evidenced by Cover Note No. DEL:50/85/1, Each for His Own and Not One for the Other; and Seumus Iain Cowley, for and on Behalf of Certain Underwriters at Lloyd's, London, Subscribing to Insurance Evidenced by Cover Note No. DEL:M822/85, Each for His Own and Not One for the Other, *Petitioners*, *versus* Mr. and Mrs. Albert Taylor, Jr., *Respondents*" in the United States Supreme Court, October Term 1991, No. 92-1107, on the Parties in said action by placing three copies thereof enclosed in a sealed envelope with postage fully prepaid, in the United States post office mail box at New York, New York, addressed as follows:

Robert B. Keaty, Esq.,
Keaty & Keaty
Suite 104
One Lafayette Square
345 Doucet Road
Lafayette, Louisiana 70503
Counsel of Record for Respondent

Winston E. Rice, Esq.
Rice, Fowler, Kingsmill, Vance, Flint & Booth
Poydras Center, Suite 2600
650 Poydras Street
New Orleans, Louisiana 70130
Counsel of Record for Petitioners

All Parties required to be served have been served.

I declare, under penalty of perjury, that the foregoing is true and correct.

Executed on January 22, 1993 at New York, New York.

/s/ LIZABETH L. BURRELL
LIZABETH L. BURRELL